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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 EHONG ESTEBAN SIU,

10 Petitioner,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.  
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Case No. C08-1407-JCC  
CR02-0192-JCC

ORDER DENYING APPLICATION FOR  
CERTIFICATE OF APPEALABILITY

15 This matter comes before the Court on Petitioner's Notice of Appeal (Dkt. No. 27),  
16 which the Court has construed as an application for a Certificate of Appealability (*see* Dkt. No.  
17 30); the Government's Response (Dkt. No. 31); and Petitioner's Reply (Dkt. No. 32). The  
18 Court hereby DENIES Petitioner's application for the reasons stated herein.

19 "A certificate of appealability may issue . . . only if the applicant has made a substantial  
20 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A certificate should  
21 issue where the prisoner shows that jurists of reason would find it debatable whether the  
22 petition states a valid claim as to the denial of a constitutional right. *See Slack v. McDaniel*,  
23 529 U.S. 473, 478 (2000); *see also Miller El v. Cockrell*, 537 U.S. 322 (2003).

24 The Court dismissed Petitioner's 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or  
25 Correct Sentence (Dkt. No. 1) because Petitioner had failed to raise any plausible challenge to  
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1 his conviction for money laundering under 18 U.S.C. § 1956(a)(2)(A). Neither of the two cases  
2 upon which he relied, *United States v. Santos*, 128 S. Ct. 2020 (2008), and *Cuellar v. United*  
3 *States*, 128 S. Ct. 1994 (2008), concerned that provision of the money laundering statute, so  
4 they have no bearing on his conviction. (*See* Order 2 (Dkt. No. 24).)

5 The Court explained that *Santos*, which interpreted the term “proceeds of some form of  
6 unlawful activity” to mean the “profits” of that unlawful activity, 128 S. Ct. at 2025, does not  
7 apply to § 1956(a)(2)(A) because that money laundering provision is not limited to unlawful  
8 proceeds. (*See* Order 2 (Dkt. No. 24).) In his Reply, Petitioner suggests for the first time that a  
9 reasonable jurist could interpret the term “funds” in § 1956(a)(2)(A) to mean unlawful  
10 “proceeds,” thereby invoking the rule in *Santos*. (*See* Dkt. No. 31 at 1.) Petitioner’s reading is  
11 implausible. Indeed, a different money laundering provision makes clear that unlawful  
12 “proceeds” refers only to a specific subset of “funds,” so the terms are not synonymous. *See* 18  
13 U.S.C. § 1956(a)(2)(B) (applying only when one “know[s] that the . . . funds . . . represent the  
14 proceeds of form of unlawful activity . . .”). No reasonable jurist could conclude that the  
15 *Santos* holding applied to § 1956(a)(2)(A). *See* 128 S. Ct. at 2023.<sup>1</sup>

16 The holding in *Cuellar* is similarly inapplicable to Petitioner’s conviction under  
17 § 1956(a)(2)(A). *Cuellar* concerned money laundering convictions under § 1956(a)(2)(B)(i),  
18 which prohibits the transportation of unlawful proceeds “knowing that such transportation  
19 . . . is designed in whole or in part . . . to conceal or disguise the nature, the location, the  
20 source, the ownership, or the control” of those proceeds. The Court held that “[t]he statutory  
21 text makes clear . . . that a conviction under this provision requires proof that the purpose—not  
22 merely effect—of the transportation was to conceal or disguise a listed attribute.” *Cuellar*, 128  
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24 <sup>1</sup> Petitioner also argues that it is debatable whether the *Santos* holding applies broadly to all unlawful  
25 activities or only to those involving illegal gambling. (*See* Reply 2 (Dkt. No. 32).) This debate is irrelevant to the  
26 case at hand, however, because *even if it applies broadly to all illegal activities*, the *Santos* holding has no bearing  
on Petitioner’s conviction under § 1956(a)(2)(A), as that money laundering provision is not limited to unlawful  
“proceeds.” (*See* Order 2 (Dkt. No. 24).)

1 S. Ct. at 2005. As is obvious from the preceding quotation, the Court's holding was explicitly  
2 limited to "conviction[s] under this provision." *Id.* Accordingly, no reasonable jurist could  
3 conclude that *Cuellar* had any effect on money laundering convictions under § 1956(a)(2)(A),  
4 notwithstanding Petitioner's argument that both provisions involve "transportation." (*See* Mot.  
5 1 (Dkt. No. 32).)

6 In conclusion, no reasonable jurist could find that either *Santos* or *Cuellar* affected  
7 Petitioner's money laundering conviction under § 1956(a)(2)(A). Accordingly, Petitioner is not  
8 entitled to a Certificate of Appealability, and his application is DENIED.

9 DATED this 11th day of August, 2009.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

JOHN C. COUGHENOUR  
United States District Judge